

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BRANDON LEE BEVERLY,

Plaintiff,

v.

**2:05 CV 75
(Maxwell)**

**DAVID A. PROCTOR, M.D.,
BOBBY HAMRICK, Supervisor,
Huttonsville Correctional Center,**

Defendants.

ORDER

It will be recalled that on September 6, 2005, *pro se* Plaintiff Brandon Lee Beverly, an inmate at the Huttonsville Correctional Center in Huttonsville, West Virginia, filed a Complaint under 42 U.S.C. § 1983 alleging a claim concerning improper medical treatment against a medical doctor as well as a supervisor employed by the Huttonsville Correctional Center. Although initially filed in the United States District Court for the Southern District of West Virginia, the above-styled civil rights action was transferred to this Court on September 19, 2005, pursuant to 28 U.S.C. § 1391(b).

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.01 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. § 1915(e).

After conducting an initial screening and review, United States Magistrate Judge John S. Kaull issued a Report And Recommendation on April 21, 2006, wherein he recommended that the Plaintiff's Complaint be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e) for failure to state a claim.

In his Report And Recommendation, Magistrate Judge Kaull provided Mr. Beverly with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised Mr. Beverly that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Kaull's April 21, 2006, Report And Recommendation have been filed by Mr. Beverly and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Kaull's April 21, 2006, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on April 21, 2006, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that, pursuant to 28 U.S.C. §§ 1915A and 1915(e), the Plaintiff's Complaint be, and the same is hereby, **DISMISSED, WITH PREJUDICE**, for failure to state a claim, and **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: July 21 , 2006

/S/ Robert E. Maxwell
United States District Judge